

This letter discusses Department of Commerce and Economic Opportunity certified business issues. See Section 9-222.1 of the Public Utilities Act. 220 ILCS 5/9-222.1. (This is a GIL.)

November 5, 2003

Dear Xxxxx:

This letter is in response to your letter dated May 19, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.1120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This letter is a request for written guidance as to how AAA should handle the enterprise zone exemption afforded qualified customers under the Electricity Excise Tax and Gas Revenue Tax statutes.

The enterprise zone process as I understand it is as follows. The Department of Commerce and Community Affairs (DCCA) certifies to the Department of Revenue that the customer meets all the requirements necessary to meet the enterprise zone exemption. The Department of Revenue then sends a notification letter to AAA authorizing the exemption of the Electric Excise and Gas Revenue Tax.

Currently after receiving the notification letter from the Department of Revenue AAA will exempt the accounts listed in the letter. However, many times the customer will have accounts located in the enterprise zone that are not listed in the Department of Revenue's letter. AAA is currently not exempting these accounts until we receive a corrected letter from the Department.

After a telephone conference call with BBB, and yourself on May 8, 2003, it is my understanding there is no statutory language requiring the Department to list the accounts. The accounts are included as a courtesy, if DCCA includes the accounts in

their letter to you, you will include them in your notification letter; if they do not you will not. The primary purpose of the letter is for notification that the customer is exempt and not to provide a detail list of all accounts that are exempt. It is up to AAA and the customer to determine what accounts are exempt.

Since AAA is almost always under audit for one or both of these taxes what documentation will the Department of Revenue expect to review in order to prove the validity of the exemption?

I am also unclear as to what happens when a certified enterprise zone customer is bought by or merged with another company, or goes through any process which results in a name change. Does the existing exemption go with the successor company or does the new company need to be re-certified?

I would appreciate any insight you can provide on this issue. I am trying to develop a clear and concise procedure as to how AAA handles enterprise zone exemptions.

It is the Department of Commerce and Economic Opportunity that issues the certifications that allow certain qualifying businesses to claim exemption from certain gas, electric, and telecommunications taxes. See Section 9-222.1 of the Public Utilities Act. 220 ILCS 5/9-222.1. Once a business has been certified, the statute requires that the Department of Commerce and Economic Opportunity notify the Department of Revenue. The Department of Revenue is then required to notify the business' utility providers.

As you know, the Department of Revenue's letters to the utility providers often include information about the utility accounts. This is done when the Department of Commerce and Economic Opportunity has provided the information. However, no investigating or checking regarding accounts is done by Revenue. Therefore, if there is an account that qualifies for exemption because the business has been certified and service for that account is in the qualifying jurisdiction, it is my opinion that that account should be counted as exempt, even if it has not been listed in the letter. You may want to contact an auditor regarding what documentation would be helpful on this point.

The question of when a business that has changed form in some way needs to have their certification revoked or reissued should be addressed to the Department of Commerce and Economic Opportunity, since it is their responsibility to make those decisions. Tom Henderson is the person in Springfield who might be able to answer questions about that.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel